

REMARKS

Claims 1, 3-8, and 10-60 are pending in the Application, of which Claims 1, 8, 15, 26, 31, 38, 44, 49, and 55 are independent claims. All claims have been rejected under 35 U.S.C. § 103(a). The Applicants traverse the rejections and add new Claims to the application. In addition, certain claims have been amended to cure a spelling error.

Regarding Rejections

Claims 1, 3-8, and 10-60 have been rejected under 35 U.S.C. § 103(a) based on U.S. Patent Nos. 5,785,050 to Davidson in combination with U.S. Patent No. 3,630,438 to Bickford, either alone or in further view of U.S. Patent No. 4,064,890 to Collins et al. or U.S. Patent No. 5,860,447 to Chu. The Applicants traverse the rejections.

As discussed in previous Remarks during prosecution, the Applicants disclose and claim a gas flow device, such as a regulator. For convenience, FIG. 7 of the application is reproduced below.

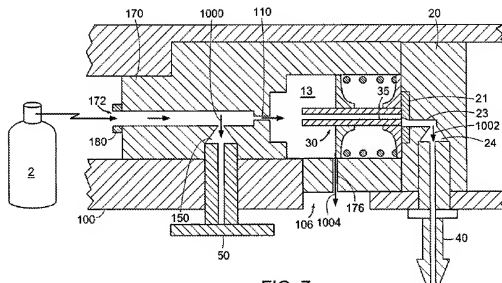


FIG. 7

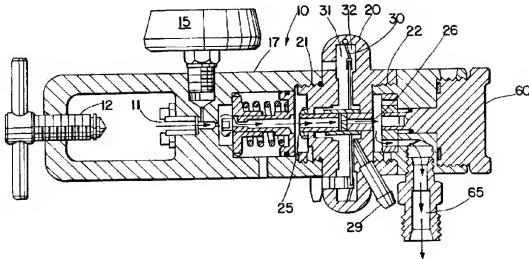
FIG. 7 is a schematic diagram of an embodiment of the Applicants' invention. As shown, the embodiment includes an outer body (100) having an inner cavity and inner elements (170, 20) within the inner cavity. In the particular embodiment, two gas fitting (50, 40) extend through

respective orifices in the outer body (100) to engage with a respective coupling feature (150, 24) on the outer wall of the inner element (170, 20). As can be seen, the arrangement of parts secures the inner elements (170, 20) within the inner cavity of the outer body (100), as claimed by the Applicants (*see* Claims 1, 8, 15, 21, 26, 31, 38, 44, 49, and 55; *see also* Claims 61 and 62). Additional detailed drawings are provided in the Application.

Accordingly, the Applicants claim the interlocking aspect of the outer body, inner element, and fitting. Specifically, Claim 1 recites (with emphasis added):

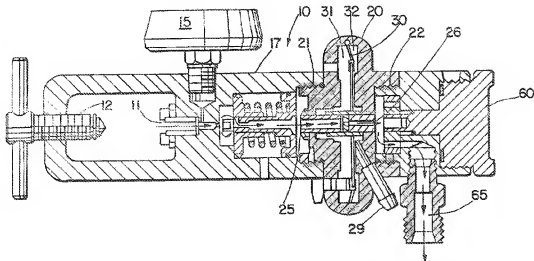
1. A gas flow device comprising:
 - an outer body of a first material having an inner cavity formed therein, the inner cavity bounded by an inner wall of the outer body, the inner wall having an orifice extending through the outer body;
 - an inner element within the inner cavity, the inner element being of a material different from the first material and having an external wall with a coupling feature, the coupling feature aligned with the orifice; and
 - a gas fitting extending through the orifice and engaged with the inner element via the coupling feature.

While the Office Action states that the Applicants' prior arguments regarding Davidson were persuasive, Davidson remains the primary reference for all rejections. Davidson discusses a medical gas demand regulator having a plurality of components. For convenience, FIG. 1 of Davidson is reproduced below.



As shown, a valve (20) is installed between a pressure reducing section (17) and a flow meter module (60). The pressure reducing section (17) has a piston assembly disposed within an inner cavity. The gas enters the regulator through a gas inlet (11), where it passes through the piston assembly and the output from the piston assembly enters the valve section (20) at its entry port (25). The flow meter then determines gas flow, which exits the flow meter through a passage (65) in a gas fitting, which connects to a cannula for delivery to a patient.

With reference to Davidson, the Office Action asserts that Davidson discloses “gas fitting (65) extending through the orifice (11) and engaged with the inner element (20) via the coupling feature (threads [21 and 22], Figure 1).” That statement is factually incorrect on its face. For convenience, FIG. 1 of Davidson is again reproduced with the specified features annotated.



As explicitly shown, the gas fitting (with passage 65 (green)) does not extend through the identified orifice (11 (yellow)), does not engage with the inner element (20 (blue)), and does not interface with the threads (21, 22 (orange)). Instead, the gas fitting (with passage 65 (green)) engages with the body of the flow meter module (60) using a dedicated threaded orifice; and the coupling features (21, 22 (orange)) mate the valve (20 (blue)) with the pressure reducing section (17) and the flow meter section (60), respectively. Consequently, the Examiner’s representation of the Davidson reference is in error and the rejections based on Davidson are not supported and should be removed.

In addition, the Office Action asserts that Davidson discloses that “the inner element being of a material different from the first material....” The Examiner fails to provide any factual citation to support that conclusion. The Applicants note that the Office’s prior position that the use of differing shading patterns intrinsically means that different materials are used was previously traversed and, apparently, accepted as persuasive in this Office Action. The Office’s representation of Davidson is therefore again traversed.

Finally, the Office Action continues to conclude that the limitation “being of a material different from the first material” is directed to a process. While the Office Action cites *In re Thorpe*, 77 F.2d 695 (Fed. Cir. 1985), that citation presupposes a product-by-process claim. The Applicants do not understand, and the Office Action does not explain, how the facts of that case are relevant to the claim limitations at issue.

The Applicants can only assume that the word “being” is triggering the Office’s conclusion because the recitation of “an outer body of a first material” did not raise the comment. The Applicants have repeatedly traversed the Office’s conclusion and have requested legal support sufficient to satisfy the Office’s burden, namely that the word “being” must be a process limitation (if the Applicants’ assumption is correct). For example, would a claim limitation to “atmosphere being of air” also be interpreted to be a process limitation? In any event, the Office has continually failed to address the traversal, as the Applicants are entitled. As such, the Office has not met its burden under the law.

The combinations of the remaining references with Davidson are limited to material choices. Because the reliance on Davidson is itself faulty, and the additional references do not cure its defects, there is no reason to address the secondary references in detail at this time.

Neither Davidson nor the other cited references, whether taken alone or in combination, disclose or suggest the claimed invention as recited in the independent claims. Each dependent claim incorporates all limitation from its independent claim. The allowability of the dependent claims therefore follows from allowability of the independent claims from which they depend.

Reconsideration of the rejections under Section 103 is respectfully requested.

Regarding New Claims

The Applicants note that this application had been previously allowed, with a Notice of Allowance being vacated based on new grounds for rejection. Subsequently, claims have been allowed or indicated as being allowable in one Office Action only to be then rejected in the next Office Action. All such rejections have been traversed. Although all rejections were traversed, claims were nevertheless amended to recite allowable subject matter. New Claims 61 and 62 now recapture that previously-allowed subject matter.

Entry and favorable consideration of the new claims are respectfully requested.

CONCLUSION

In view of the above remarks, it is believed that all claims are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,

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Dated: June 8, 2010